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6 **UNITED STATES DISTRICT COURT**
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EASTERN DISTRICT OF CALIFORNIA

9 MARCUS R. WILLIAMS, CASE NO. 1:05-cv-00124-AWI-SMS PC
10 Plaintiff, ORDER ADOPTING FINDINGS AND
11 v. RECOMMENDATIONS, AND DISMISSING
12 DERRAL G. ADAMS, et al., DECLARATORY RELIEF CLAIM AND
Defendants. DEFENDANTS PETERS AND WOODFORD
13 (Docs. 26 and 27)
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15 Plaintiff Marcus R. Williams (“Plaintiff”) is a state prisoner proceeding pro se and in forma
16 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United
17 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

18 On March 28, 2007, the Magistrate Judge filed a Findings and Recommendations herein
19 which was served on Plaintiff and which contained notice to Plaintiff that any objection to the
20 Findings and Recommendations was to be filed within thirty days. After obtaining an extension of
21 time, Plaintiff filed an Objection to the Findings and Recommendations on May 29, 2007.

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this
23 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
24 Court finds the Findings and Recommendations to be supported by the record and by proper analysis.
25 The issues raised in Plaintiff’s objections have been sufficiently addressed in the Findings and
26 Recommendations. This Court agrees that Plaintiff has not stated a claim against Defendant Peter
27 and Defendant Woodford because the complaint fails to state that Plaintiff’s appeal put them on
28 notice of a Constitutional violation and these Defendants had the ability to stop the Constitutional

1 violation. See Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir.1995) (holding that supervisor can
2 violate a prisoner's Eighth Amendment rights by failing to intervene when official acts
3 unconstitutionally if supervisor had ability to intervene). Given that the complain has already been
4 amended twice and screened by the Magistrate Judge three times, the court declines to allow further
5 amendments. See Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (requiring court to give pro se
6 prison litigants leave to amend at least once if complaint's deficiencies can be cured). To the extent
7 Plaintiff raises entirely new allegations against different guards and a different prison in the
8 objections, Plaintiff is informed that objections to Findings and Recommendations are not the
9 appropriate place to raise new theories of relief. See Greenhow v. Secretary of HHS, 863 F.2d 633,
10 638-39 (9th Cir. 1988) (new theory cannot properly be raised in objections to Findings and
11 Recommendations).

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The Findings and Recommendations, filed March 28, 2007, is adopted in full;
- 14 2. This action shall proceed on plaintiff's second amended complaint, filed October 13,
15 2006, on plaintiff's Eighth Amendment denial of exercise claim against defendants
16 Adams, Hansen, Wan, and Beeler only;
- 17 3. Plaintiff's claim for declaratory relief is dismissed; and
- 18 4. Plaintiff's Eighth Amendment denial of exercise claim against defendants Peters and
19 Woodford is dismissed, with prejudice; and
- 20 5. Defendants Peters and Woodford are dismissed from this action based on plaintiff's
21 failure to state a claim upon which relief may be granted against them.

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23 IT IS SO ORDERED.

24 Dated: June 2, 2007

25 /s/ Anthony W. Ishii
26 UNITED STATES DISTRICT JUDGE
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